

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MATTHEW KUOLT,)	CIVIL NO. 04-00489 HG-KSC
)	
Plaintiff,)	ORDER TO SHOW CAUSE
)	
vs.)	
)	
STATE OF HAWAII, et al.,)	
)	
Defendants.)	
)	
_____)	

ORDER TO SHOW CAUSE

On January 30, 2006, *pro se* Plaintiff Matthew Kuolt filed a document titled, "Plaintiff appealing the Judges Adoption of Magistrates Findings & Recommendations." Plaintiff claims that he never received this court's Findings and Recommendation to grant Defendants' Motion for Summary Judgment ("December 12 Findings"), entered December 12, 2005. The docket sheet in Plaintiff's action reveals the court's notation that the December 12 Findings was copied to all parties on December 13, 2005. Docket No. 60. Plaintiff says, however, that he became aware of the December 12 Findings on or about January 1, 2006, when he received Defendants' pre-trial statement referring to the December 12 Findings. (Ex. 1.) Plaintiff does not explain why he waited a month after this discovery to notify the court that he had not received the December 12 Findings.

The district court adopted the December 12 Findings on January 12, 2006, and judgment was entered. Plaintiff contests this decision, arguing that, because he never received the December 12 Findings, he did not have adequate time to oppose it.

Notwithstanding Plaintiff's claims, on January 18, 2006, he did, in fact, file an "Opposition to Magistrate[']s Granting Summary Judgement for Defendants," ("Opposition"), which was dated January 5, 2006. Plaintiff's Opposition made no mention that he had not received a copy of the December 12 Findings.¹ The court liberally construed Plaintiff's Opposition as a motion for reconsideration, reviewed and considered it, and entered an order denying the motion on January 30, 2006.

As exhibits to the present "appeal," Plaintiff submits two letters, both dated January 18, 2006, one to the Honorable Helen Gillmor, and one to the Clerk of Court, attesting that he did not receive a copy of the December 12 Findings. (Exs. 1 and 2.) Neither of these letters have been received by the court, although both are dated before the present "appeal."

It is unclear whether the present "appeal," is an objection to the December 12 Findings, a motion for reconsideration of the adoption of the December 12, Findings, or a notice of appeal of the decision in this action. The court

¹ Nor was there any explanation why the Opposition, which was dated January 5, 2006, was not received until twelve days later, on January 18, 2006.

cannot consider Plaintiff's "appeal," and determine how to proceed, until Plaintiff submits an official copy of the Tallahatchie County Correctional Facility mail log, showing that the December 12 Findings was never received at the prison, and also showing the date or dates that Plaintiff sent the aforementioned letters to the court. After Plaintiff provides the court with verifiable proof that the December 12 Findings was never received at the prison, the court will determine how to proceed with Plaintiff's "appeal." If Plaintiff is unable to provide such documentation, he may appeal the court's decision in this action to the United States Court of Appeals for the Ninth Circuit. Accordingly, Plaintiff is ORDERED to provide a copy of the prison legal and regular mail logs for December 2005, and January 2006, **on or before February 22, 2006.**

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, February 1, 2006.




Kevin S.C. Chang
United States Magistrate Judge